

REMARKS TO FCC ON REVISIONS TO THE FTC'S TELEMARKETING SALES RULE

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Recently, the FCC issued a notice, requesting comments relating to its efforts to regulate telemarketing in relation to new rules from the FTC (47 CFR Part 64 / CG Docket No. 02-278, FCC 03-62). As the Compliance Manager for a telemarketing service bureau, I appreciate the opportunity to comment on the impact of regulation on our firm. My company manages campaigns that will be touched by the FTC's new rules, including business-to-consumer market research, sales and fund-raising.

I'm not enthusiastic about revisions to the FTC's Sales Rule. The national "Do Not Call" list, in particular, will discourage businesses from using telemarketing to grow business. The risk-to-reward ratio is too high, particularly with an \$11,000 per violation fine – a penalty in excess of that for commission of some felonies.

With that said, I applaud the FTC's efforts to regulate certain practices, such as free-to-pay conversions. I support the FTC's curbs on the sharing of pre-acquired account information between disparate entities. Moreover, I appreciate the FTC requiring marketers – not service bureaus – to purchase the national "Do Not Call" list. In some states, regulators require marketers *and* bureaus to purchase their no call lists, a practice that seems to violate the fair practice doctrine.

I respect the FCC's even-handed approach to regulating telemarketing. In 1992, the FCC had the foresight to reject a national no call list in favor of company-specific restrictions. This solution enabled law-abiding telemarketing companies to experience unprecedented growth, while providing consumers with a measure of privacy and protection.

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During the 1990's, companies learned telemarketing produces better results than other marketing mediums. As a result, they invested in in-house centers – or built long-term relationships with service bureaus. This revenue enabled telemarketers to turn call centers into technology centers, that offered unprecedented training and professional growth opportunities. This is especially true among service bureaus. For example, Advanced Data-Comm experienced 400% growth from 1996-2000, which enabled us to build a state-of-the-art network and cultivate a team of dedicated, highly-trained professionals. Unfortunately, this growth undercut the benefits of company-based “Do Not Call” lists. Legitimate marketers honored personal “Do Not Call” requests, but consumers were barraged by more telemarketing calls than ever. Consumers believed the rules weren't working. This discontent is the soil that eventually harvested draconian measures like state-based and national “Do Not Call” lists.

I realize that the FCC will likely apply the FTC's rules to telecommunications, banking and insurance. The success – and abuses – of the telemarketing industry have produced a consumer backlash that cannot be ignored. Instead of railing about issues involving interstate commerce, privacy and free speech, I want to use this forum to provide a “real world” look at the impact of legislation.

The FTC's Sales Rule is not immune to the “Law of Unintended Consequences.” Advanced Data-Comm has taken proactive steps to follow the substance and spirit of the FTC's rules. As a result, I believe our experiences can illustrate challenges that telemarketers will soon face.

- 1) **DISCLOSURES OF EXEMPTIONS:** The FTC exempts certain calling from their “Do Not Call” list requirements. For example, business-to-business, market research, political and fund-raising calls are exempt. The FTC also provides a safe harbor for calls made to individuals with whom the marketer has an existing relationship (18 months). These exemptions also apply in most states that maintain “Do Not Call” lists. Unfortunately, these states have done a poor job educating consumers about these exemptions.

On the state level, consumers have a misguided expectation – that has been fanned by bellicose statements from legislators, the media, and self-appointed advocates. They believe that registering on a state “Do Not Call” list prohibits companies from calling their homes altogether. However, the intent of the law is to *reduce* residential calls, not *prohibit* them altogether. In other words, the term “Do Not Call” is technically a misnomer.

Unfortunately, the FTC is falling into this same trap. In fairness, the FTC's “Do Not Call” website cites exemptions. However, you must carefully comb the site to find these citations. The state websites offer similar notations, often buried in the “question and answer” location that the FTC favors. As a result, the FTC can expect the same fate: being deluged with baseless complaints.

For example, Advanced Data-Comm recently received complaints in Pennsylvania and Tennessee for calls made to individuals who are enrolled on their respective state's "Do Not Call" list. In both cases, the calls entailed exempt market research with no commercial intent. However, these complaints require telemarketers to devote time and resources to fend off potential fines. Similarly, regulators lose valuable time cataloging and reviewing these complaints.

In addition, consumers also hold the naïve impression that placing their phone number on a state "Do Not Call" list immediately removes them from any active telemarketing effort. However, it can take states up to three months – sometimes more – to submit an updated list to marketers.

State "Do Not Call" lists have been packaged as a solution that will stop all calls. The media has fostered this perception – and legislators have failed to temper expectations. When consumers receive a telemarketing call, they don't ask themselves whether it's exempt. Few consumers even understand the concept of exemption. Instead, they reflexively assume a call to their household is a violation.

The FTC is fueling these expectations, though not intentionally. A national "Do Not Call" list is not a panacea for privacy. Consumers will still receive calls from salespeople, charities, researchers and politicians – just less regularly. Unless regulators proactively address this misconception, consumers will mistakenly believe the FTC – and the FCC – have failed them again.

I propose a solution. The FTC is currently drafting rulemaking on the mechanics of the national registry. When consumers enroll in the national "Do Not Call" list, the FTC should be required to disclose all exemptions. This could take the form of a verbal statement – or a terms and conditions statement to be reviewed over the internet. Moreover, these disclosures should also include the timeframe for when the consumers' request will be delivered to marketers. This solution holds consumers more accountable. Plus, it dovetails philosophically with the FTC's own Telemarketing Sales Rule, which requires consumer marketers to disclose all material restrictions of a product prior to completing a transaction.

- 2) **CUSTOMER SERVICE:** Occasionally, telemarketing efforts cannot neatly be categorized as sales, lead generation, market research or fund-raising. As a result, I believe either the FTC or the FCC should establish a service phone line for marketers during normal business hours. This would ensure conscientious marketers have a resource to filter through the "gray areas."

For example, my company recently had the opportunity to conduct a campaign to radio listeners in New York. It involved calling individuals who had identified themselves as listeners of a particular radio station in a previous effort. In this follow up, we would tell these listeners how they could win \$500 just for listening to their favorite station at a particular time. Under New York law, an existing relationship is exempt. However, would a call that simply identified a consumer as a radio listener constitute an existing relationship? These gray areas exist – and honest teleservices professionals want straight answers from the people who enforce the laws.

- 3) **CALLER I.D.:** The FTC rules prohibit telemarketers from suppressing their caller i.d., beginning in March of 2004. However, Advanced Data-Comm has decided to display our name and phone number on all outgoing calls. First, we believe complying now ensures we're prepared to resolve any unexpected issues relating to caller i.d. prior to the FTC's deadline. Second, my reading of state law indicates over twenty-five states now require marketers to display caller i.d. if they have the technological capability. We now have this capability.

Since our telephony upgrade, we have encountered many issues relating to caller i.d. I'd like to share with you.

Our caller i.d. has a limitation that is common to other telemarketers. Our call centers may run multiple campaigns for different marketers. Unfortunately, we can only display one name and phone number on our caller i.d. As a result, businesses and consumers see "Advanced Data-Comm" and our center's phone number on every call. We cannot shut off our caller i.d. – even on behalf of an exempt client – since it would impact our compliance on behalf of non-exempt clients.

This limitation could have a negative effect on telemarketing service bureaus once the FTC's "Do Not Call" list is implemented this fall. Currently, marketers are the only entities that can purchase the FTC list. As a result, they are truly responsible for compliance at the Federal level. However, caller i.d. will show the name of the service bureau, not the marketer. As a result, the service bureau has greater exposure to receive complaints and legal action that fall under the responsibility of the marketer. I don't believe consumers are aware of the differentiation between marketers and service bureaus – and the FTC rules do little to clarify it.

Advanced Data-Comm HAS set up a voice mail that encouraged respondents to provide their name and phone number for a return call. Unfortunately, this has also resulted in some unique challenges. For example, we encounter individuals who request to be placed on our "Do Not Call" list, but fail to provide a phone number or name. Many times, they will say, "You have my number, you know who I am," even though we don't have caller i.d. on return calls in some call centers. Other times, they will ask us to remove a different phone number than the one we called, making it difficult to find their record and fulfill their request.

- 4) **BUSINESS-TO-BUSINESS ISSUES:** Business-to-business calling is indirectly impacted by the FTC's national "Do Not Call" list. Currently, business-to-business calling is exempt from the FTC's requirements, including the national "Do Not Call" list. However, many businesses believe Federal and State "Do Not Call" rules apply to businesses. On occasion, a business will ask to be placed on our "Do Not Call" list. We honor those requests, since it is a good business practice. However, we occasionally discard them if they apply to a multi-million dollar organization or the request originated from a lower level functionary, such as a receptionist.

Business misinterpretation of the rules is an irritant, not a grave threat. However, business-to-business calling is exposed to Federal penalties due to sloppy list management practices.

Let me give you an example. Advanced Data-Comm conducts magazine subscription efforts on behalf of publishers who require accreditation from BPA (Business of Performing Audits). Each year, BPA audits the magazine subscription data to ensure it is accurate and complete. These magazines are generally free, since they are targeted to specific industry segments (i.e. laser engineers, medical equipment manufacturers). During these efforts, Advanced Data-Comm will confirm mailing and demographic (i.e. job function, buying responsibilities) information. As subscriber lists grow more qualified, publishers can charge more for advertising.

These efforts are exempt, since they target businesses. Moreover, many are subscription renewal efforts, meaning the publisher and recipient have an existing relationship. Despite these exemptions, business campaigns entail great risk.

Publishers purchase their calling lists from a variety of sources. These lists may be compiled from conference attendees, product purchasers or subscribers to similar magazines. Unfortunately, not every record on these lists contains business information. For example, we recently received a complaint from a gentleman who'd recently enrolled in the Texas "Do Not Call" list. We had called to offer him a free subscription to Incentive magazine, which focuses on employee recognition and motivation strategies. When we pulled his record, we found it included his name, business title, company name, business address and *home phone number*. According to our records, this gentleman provided this information when he had subscribed to a different sales and marketing magazine from the same publisher (which provided an existing relationship defense). In another circumstance, we accidentally bumped a business-to-business list against all state no call lists. 600 of the 17,000 phone numbers matched!

These examples vividly illustrate that you cannot assume all phone numbers on a business list go to a business. Few list providers are checking their business lists to ensure they contain a business phone number. As a result, marketers and service bureaus could unintentionally violate the state "Do Not Call" lists. I'm very confident this problem will snowball once the FTC's "Do Not Call" list is activated.

- 5) **COST OF COMPLIANCE:** The \$11,000 per violation penalty established by the FTC is excessive. Here's why: let's say a good-intentioned marketer accidentally fails to bump a 2,000 record list against the FTC list, even though they have policies in place to ensure this doesn't happen. Let's say this mistake produced 20 complaints to the FTC. Despite safe harbor provisions, this accident could put this marketer on the line for \$220,000 in fines. This is enough to put a smaller marketer out of business! The FTC is seeking a level of perfection that no business – or any branch of government – can meet! Administrative oversights do occur. In a service bureau, you must rely on the seamless teamwork between client, project manager, compliance manager and programmer to avoid errors. If one team member fails, everyone is at risk. The FTC needs to take these complexities into account.
- 6) **BALANCE:** I have growing concern that regulatory bodies like the FTC lack the requisite objectivity in dealing with the teleservices industry. Many representatives of the telemarketing industry have complained that the FTC has failed to consider their point of view.

This is exemplified by a recent FTC action, which pushed back rules pertaining to abandon percentage and leaving a message in conjunction with an abandon. The FTC even admitted that they failed to recognize the complexities telemarketers faced in implementing these rules. While I applaud the FTC for its flexibility, these actions raise a larger question. Why didn't the FTC research these issues earlier? Any telemarketing executive could have outlined the difficulties they would encounter in implementing these rules.

- 7) **INSURANCE:** Although Advanced Data-Comm is not involved in insurance work, I want to quickly comment about applying the national "Do Not Call" list to that industry. Insurance is a very decentralized industry. How will independent agents, who are affiliated with various companies, comply? Will they need to purchase the list themselves? What about companies like Excel, which rely on a loosely-affiliated group of agents to sell their services? Would Excel be responsible for the actions of their agents? In both cases, the companies lack the centralized structure of a call center to enforce Federal "Do Not Call" rules.

In short, there are many companies that rely heavily on networks of dealers and distributors who call on consumers outside of a call center. How can you get these companies -- from an operational standpoint -- to reduce their exposure to actions taken by independent agents?

I appreciate the time and consideration you have given to my observations. An electronic version of this document is included in the enclosed diskette.

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